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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,147	01/16/2004	Lawrence I. Wechsler	W1000-24	7189

7590 12/07/2006

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EXAMINER

NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,147

Applicant(s)

WECHSLER, LAWRENCE I.

Examiner

Trinh T. Nguyen

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE dated 9/22/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination under 37 CFR 1.114 After Final Rejection

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/22/06 has been entered.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3,4,12,13,19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3644

In claim 3: the phrase "structural portion being located so as to at least partially overlap an axial extent of said handle" is confusing because it is unclear as to what the term "an axial extent of said handle" defines and/or intends to be encompassed.

In claim 4: the phrase "at least a portion of said grip being disposed in an axial position along a toy axis which is disposed inwardly of an axial extent of said shielding portion" is confusing because it is unclear as to what the term "an axial extent of said shielding portion" defines and/or intends to be encompassed.

In claim 12: the term "radially outward portions of the members" is confusing because it is unclear as to what the term "radially outward portions of the members" defines and/or intends to be encompassed; and the phrase "said radially outward portions extend past an axial...partially shielding the handle" is confusing because it is unclear as to what the term "radially outward portions" defines and/or implies.

In claim 13: the term "radially outermost surfaces of the members" is confusing because it is unclear as to what the term "radially outermost surfaces of the members" defines and/or implies.

In claim 19: it is not understood what "manner as to discourage access by a snout of an animal"? Also, it is not understood what is being claimed by the phrase "in a general direction of said toy axis based upon an inner radial opening size".

In claim 20: the phrase "partially surround at least a portion...position of an inwardmost end of said at least one handle" is confusing because it is unclear as to what the terms "an axial extent of said handle" and "an axial position of an inwardmost end" define and/or intend to be encompassed.

Art Unit: 3644

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 9-17, 19, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Willinger et al. (US 6,651,590) (please see a more detail Figure 22 of Willinger et al. attached with the Office Action for further explanation).

For claim 1, Willinger et al. disclose a toy, comprising: a structural configuration including a portion thereof which comprises an animal access region defined by a structural portion; and said structural configuration including an other portion defining an animal restricted region.

For claim 2, Willinger et al. further disclose said animal restricted region is created by provision of shielding structure.

For claim 3, Willinger et al. further disclose said animal restricted region includes at least one handle including a portion extending at least partially along a handle axis and said shielding structure having at least one structural portion disposed in a spaced apart radial position of said handle relative to said handle axis, said at least one structural portion being located so as to at least partially overlap an axial extent of said handle.

For claim 4, Willinger et al. further disclose a toy which inhibits user hand contact with animal saliva deposited on a play toy during interactive play by the animal and the user, comprising: at least one structural portion being disposed in a position readily accessible by a mouth of the animal and by which the animal can hold the toy by retaining the at least one structural portion in the mouth; at least one grip being hand-accessible by the user; and a shielding portion arranged to at least partially discourage animal access to said at least one grip and at least a portion of said grip being disposed in an axial position along a toy axis which is disposed inwardly of an axial extent of said shielding portion.

For claim 9, Willinger et al. further disclose said at least one structural portion includes members disposed in circumferentially spaced apart positions about a toy axis and radially spaced apart therefrom.

For claim 10, Willinger et al. further disclose said members include at least three members at least a portion of each of the members extending longitudinally co-directional with said toy axis.

For claim 11, Willinger et al. further disclose said at least a portion of said three members which extend longitudinally are spaced apart circumferentially from one another by approximately equal angular intervals.

For claim 12, Willinger et al. further disclose said at least one grip includes at least one handle of elongated dimension arranged along a longitudinal handle axis which is approximately aligned with the toy axis; and radially outward portions of the members are extended outward from a center of the toy in an axial direction such that

Art Unit: 3644

said radially outward portions extend past an axial position of an inwardmost end of the handle, thereby at least partially shielding the handle.

For claim 13, Willinger et al. further disclose radially outermost surfaces of the members are shaped to collectively describe a generally spherical envelope.

For claim 15, Willinger et al. further disclose the toy is formed integrally.

For claim 16, Willinger et al. further disclose the toy includes a resilient material.

For claim 17, it is noted that the method steps (i.e., "providing the toy with an animal access region..." and "providing the toy with an animal restricted region...") as claimed are inherently performed within Willinger et al.'s toy, since Willinger et al.'s toy has the specific structural configurations similar to the toy claimed by the applicant.

For claim 19, Willinger et al. further disclose a toy axis passes through said at least one handle, said at least one handle being accessible at least in a direction of said toy axis; and said structure at least partially physically shielding said animal restricted region from access by a mouth of the animal is at least partially defined by structural portions of said animal access regions arranged to at least partially surround at least a portion of an axial extent of said handle in such a manner as to discourage access by a snout of an animal to said handle along said toy access based upon an inner radial opening size thereof.

For claim 20, Willinger et al. further disclose said handle is defined by an elongated member extending longitudinally codirectional with said toy axis; and said structural portions of said animal access regions which are arranged to at least partially surround at least a portion of an axial extent of said handle are extended outward from

Art Unit: 3644

a center of the toy in an axial direction past an axial position of an inwardmost end of said at least one handle.

Furthermore, it should be noted that recitations (e.g., "which the animal is relatively more likely...accessibility, than a remainder of the toy", "relatively less likely to be accessed...being accessible by a hand of a human user", "which physically deters an animal...the animal restricted region", "graspable by a hand of a human user", "readily accessible by a mouth...at least one structural portion in the mouth", "is self-righting...handle extending horizontally") of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Presently, the Willinger et al. reference provides the claimed structure, and is therefore, capable of functioning as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willinger et al. (US 6,651,590).

As described above, Willinger et al. lack to mention the step of grasping the animal restricted region with the hand of the user at least after the animal gripped the

Art Unit: 3644

animal access region in the mouth. It is noted that whether the grappling (by the user) and gripping (by the animal) steps occur in a particular order is deemed to be a matter of design choice since the order of the steps solve no stated problem and/or there isn't any new or unexpected result and benefit obtained, and it appear that the invention would perform equally well with the steps occur in any order (i.e., the user can grab the animal restricted region before the animal grips the animal access region).

Response to Arguments

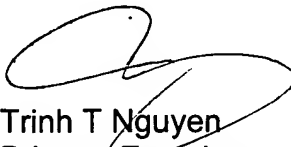
9. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection as above.

Conclusion

10. zAny inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M). The examiner's supervisor, Teri Luu can be reached on (571) 272-7045 for the purpose of status inquiry only. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T. Nguyen
Primary Examiner
Art Unit 3644

12/5/06

